

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ADIDAS AG and ADIDAS AMERICA,	)	
INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 17-285 (GMS)
	)	
ASICS AMERICA CORPORATION and	)	
FITNESSKEEPER, INC.,	)	
	)	
Defendants.	)	

**[PROPOSED] SCHEDULING ORDER**

This \_\_\_\_ day of \_\_\_\_\_ 2017, the Court having reviewed the parties' Joint Status Report, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before **August 11, 2017**.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before **December 4, 2017**.
3. **Reliance Upon Advice of Counsel.** The parties shall meet and confer regarding the use of the defense of reliance upon advice of counsel **March 29, 2018**. Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than **March 29, 2018**. If defendant elects to rely on advice of counsel as a

defense to willful infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff **two (2) weeks after the *Markman* Order issues.**

4. ***Markman* Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on **March 22, 2018**, beginning at **9:30 a.m.** in Courtroom 4A. The *Markman* hearing is scheduled for a total of 3 hours with each side having 1.5 hours. On or before **November 10, 2017**, the parties shall exchange proposed terms for claim construction. On or before **November 28, 2017**, the parties shall exchange proposed constructions of the proposed terms and supporting intrinsic evidence. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues not later than **December 8, 2017**. On or before **December 22, 2017**, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the court a Joint Appendix of Intrinsic Evidence (the “Joint Appendix”) containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court’s website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on **January 19, 2018**, and answering claim construction briefs on **February 9, 2018**. Briefing will be presented pursuant to the court’s Local Rules.

5. **Discovery.** Fact discovery shall open on **June 23, 2017**. All fact discovery in this case shall be initiated so that it will be completed on or before **June 4, 2018**. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before **August 8, 2018**. Rebuttal expert reports shall be served on or before **September 7, 2018**. Expert Discovery in this case shall be initiated so that it will be completed on or before **October 3, 2018**.

a. **Initial Discovery in Patent Litigation.** Pursuant to Paragraph 4 of the Default Standard for Discovery in this District, Plaintiffs shall serve an initial disclosure of accused products on or before **July 12, 2017**. Defendants shall produce core technical documents on or before **August 11, 2017**. Plaintiffs shall produce initial infringement charts on or before **September 11, 2017**. Defendants shall produce initial invalidity contentions and prior art on or before **October 11, 2017**.

b. **Discovery and Scheduling Matters.** Should counsel find they are unable to resolve a discovery<sup>1</sup> or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is non-argumentative, not to exceed two (2) pages outlining the issue(s) in dispute.

A sample letter can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

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<sup>1</sup> Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern.

6. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court by **August 11, 2017**. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than **October 15, 2018**. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than **October 22, 2018**. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before **October 25, 2018**. If the Court determines that argument is necessary to assist in the resolution of any request to file summary judgment, it shall notify the parties of the date and time on which the Court will conduct a telephone conference to hear such argument. Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.

9. **Case Dispositive Motions.** To the extent permitted, all case or issue dispositive motions shall be served and filed within two weeks of the Court's decision to permit the filing of

such motions. Briefing will be presented pursuant to the Court's Local Rules. The parties may agree on an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing pursuant to District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference.** On **February 19, 2019**, beginning at **10:00 a.m.**, the Court will hold a Pretrial Conference with counsel in Courtroom 4A. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft, as well as the information defendant proposes to include in the proposed pretrial order.

**Motions in limine**<sup>2</sup>: **NO MOTIONS IN LIMINE SHALL BE FILED**; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before

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<sup>2</sup> The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's List of Evidentiary Issues It Intends To Raise."

and after the trial day). The parties shall file with the court the joint Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov), on or before **January 28, 2019**.

13. **Trial.** This matter is scheduled for a **10-day** jury trial beginning at **9:30 a.m.** on **March 11, 2019**, in Courtroom 4A.

14. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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SENIOR UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

<b>Event</b>	<b>Proposed Deadline</b>
Rule 26(f) Meet and Confer	June 1, 2017
Joint Status Report and Scheduling Order Due	June 12, 2017
Rule 26(a) Initial Disclosures	August 11, 2017
Parties to submit joint proposed protective order and proposed ESI Discovery Order (or their respective proposed protective orders, if the parties cannot agree in good faith)	August 11, 2017
Fact Discovery Opens	June 23, 2017
Plaintiff's Initial Disclosure of Accused Products	July 12, 2017
Defendants' production of core technical documents	August 11, 2017
Plaintiff's production of initial infringement charts	September 11, 2017
Defendants' production of initial invalidity contentions and prior art	October 11, 2017
Joinder of Parties or Amendment of Pleadings	December 4, 2017
Exchange of Proposed Terms for Construction	November 10, 2017
Exchange of Proposed Constructions and Intrinsic Evidence	November 28, 2017
Meet and Confer on Proposed Claim Constructions	December 8, 2017
Final Joint Claim Chart	December 22, 2017
Opening Claim Construction Briefs	January 19, 2018
Answering Claim Construction Briefs	February 9, 2018
Joint Appendix of Intrinsic Evidence	February 9, 2018
<i>Markman</i> Hearing	March 22, 2018 at 9:30 a.m.
Meet and confer regarding use of defense of reliance upon advice of counsel	March 29, 2018

<b>Event</b>	<b>Proposed Deadline</b>
Disclosure of any opinions of counsel upon which a party intends to rely	2 weeks after <i>Markman</i> Order
Close of Fact Discovery	June 4, 2018
Opening Expert Reports to be Served by the Party that Bears the Burden of Proof	August 8, 2018
Rebuttal Expert Reports	September 7, 2018
Close of Expert Discovery	October 3, 2018
Opening Letter Briefs Seeking Permission to File Summary Judgment Motions	October 15, 2018
Answering Letter Briefs to File Summary Judgment Motions	October 22, 2018
Reply Letter Briefs Seeking Permission to File Summary Judgment Motions	October 25, 2018
Summary Judgment – Opening Briefs	Within 14 days of court’s approval
Summary Judgment – Answering Briefs	14 days after Opening Briefs filed
Summary Judgment – Reply Briefs	7 days after Answering Briefs filed
Summary Judgment Hearing	TBD
Final Pre-Trial Order	January 28, 2019
Pretrial Conference	February 19, 2019 at 10:00 a.m.
Trial	March 11, 2019 at 9:30 a.m.